

FILED

2008 MAY 27 P 3:48

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

1 Lisa M. Chapman (SBN #118113)
2 NIXON PEABODY LLP
3 200 Page Mill Road, Second Floor
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5 Telephone: (650) 320-7700
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7 Attorney for Plaintiff
8 MICHEL GELINAS

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 MICHEL GELINAS, an individual,
14
15 Plaintiff,

16 vs.

17 THE BERGQUIST COMPANY, a Minnesota
18 corporation, and DOES 1 – 20, inclusive,
19
20 Defendants.

Case No.: C-08-02137 PVT

REQUEST FOR JUDICIAL NOTICE

BY FAX

21 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S MOTION TO**
22 **REMAND TO STATE COURT**

23 In connection with its Motion to Remand, plaintiff Michel Gelinas hereby requests that this
24 court take judicial notice of the following pursuant to Federal Rule of Evidence 201:

- 25 1. The Complaint in the action entitled Michel Gelinas v. The Bergquist Company, a true and
26 correct copy of which is attached hereto as Exhibit A; and,
27 2. The Notice of Removal of Action, a true and correct copy of which is attached hereto as
28 Exhibit B.

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///

1 DATED: May 27, 2008

2 Respectfully submitted,

3 NIXON PEABODY LLP

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5 By:



6 Lisa M. Chapman
7 Attorneys for Plaintiff
8 MICHEL GELINAS
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7 Attorney for Plaintiff
8 MICHEL GELINAS

ENDORSED

2008 MAR 27 P 3: 32

A. Ilias

RECEIVED CLERK OF SUPERIOR COURT
COUNTY OF SANTA CLARA, CALIFORNIA
BY _____
DATE _____

9 SUPERIOR COURT OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SANTA CLARA

11 MICHEL GELINAS, an individual,

12 Plaintiff,

13 vs.

14 THE BERGQUIST COMPANY, a Minnesota
15 corporation, and DOES 1 - 20, inclusive,

16 Defendants.

Case No.: 108CV109164

COMPLAINT FOR DECLARATORY
RELIEF

BY FAX

17
18
19 Plaintiff, Michel Gelinas (hereinafter "GELINAS" or "Plaintiff"), for his complaint against
20 Defendant the Bergquist Company (hereinafter, "BERGQUIST" or Defendant), alleges and states as
21 follows:

22 NATURE OF ACTION

23 1. This is an action by GELINAS, a former employee of BERGQUIST, whereby
24 GELINAS seeks a determination and declaration of his rights, duties and obligations, if any, in
25 connection with the Non-compete, Non-Solicitation and Confidentiality Agreement (hereinafter the
26 "NON-COMPETE AGREEMENT") signed by GELINAS on or about April 27, 2004 and the
27 Separation Agreement and General Release (hereinafter the "SEPARATION AGREEMENT")
28 entered into between GELINAS and BERGQUIST on or about October 23, 2007.

COMPLAINT FOR DECLARATORY RELIEF

F. 1. 1. 1

PARTIES, JURISDICTION AND VENUE

2. GELINAS is an individual residing in the State of California, County of Santa Clara.

3. Plaintiff is informed and believes and thereon alleges that BERGQUIST is a Minnesota corporation with its principal place of business in Chanhassen, Minnesota. BERGQUIST is a developer, manufacturer and distributor of thermal products, membrane switches, electronic components and touch screens.

4. Plaintiff does not know the true names and capacities whether individual, corporate, partnership or otherwise, of DOES 1 – 20, inclusive, and therefore sues these Defendants by fictitious names. Plaintiff is informed and believes, and thereon alleges that such Defendants are, in some manner, persons or entities related to BERGQUIST and are responsible for the matters alleged herein and/or are interested in the matters which are the subject of this complaint, and therefore should be made parties to this action. When the true names and capacities of DOES 1 – 20 are ascertained, this complaint will be amended accordingly.

5. Plaintiff is informed and believes, and on that basis alleges, that all relevant times each of the Defendants (including the fictitiously named DOE Defendants), were the alter ego, agent, servant, employee or principal of each of the other Defendants, and in doing the acts alleged were acting within the course and scope of their agency or employment with the knowledge and consent of each Defendant.

6. Jurisdiction is proper in California because Defendant sold goods that were purchased by consumers in California and employed sales personnel that resided in California and performed employment related duties in California and Defendant's relationship to the state is such that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.

7. Venue is proper in Santa Clara County Superior Court because (a) GELINAS resides in Santa Clara County, and (b) the employment related services provided by GELINAS pursuant to the terms of the employment agreement entered into between the parties were predominately provided by GELINAS in Santa Clara County.

///

THE AGREEMENTS

8. On or about April 12, 2004, BERGQUIST, by and through its agent, verbally offered GELINAS a Regional Sales Manager position whereby he would be responsible for BERGQUIST'S Northern California, Oregon, Washington and Canada sales territory. BERGQUIST subsequently confirmed that verbal offer by a written employment agreement (hereinafter the "EMPLOYMENT AGREEMENT") dated April 12, 2004 and delivered to GELINAS in Gilroy, California. (A true and correct copy of the EMPLOYMENT AGREEMENT is attached hereto as Exhibit A, and incorporated herein by this reference.) The EMPLOYMENT AGREEMENT obligated GELINAS to provide employment related services to BERGQUIST, in exchange for which BERGQUIST would compensate GELINAS by paying him a salary of One Hundred and Fifteen Thousand Dollars (\$115,000.00) per year, bonuses pursuant to the terms of BERGQUIST'S sales incentive plans (including its "RSM NA Sales Incentive Compensation" plan) and benefits. GELINAS' duties as a Regional Sales Manager included coordinating and managing the sales activities of BERGQUIST in its Northern California, Oregon, Washington and Canada sales territory. None of the employment related services required to be provided by GELINAS were to be performed in Minnesota, and all were to be performed and were actually performed in California and the other areas of the subject sales territory.

9. On or about April 27, 2004, GELINAS commenced his employment with BERGQUIST by attending a mandatory new employee orientation at BERGQUIST'S corporate office in Minneapolis, Minnesota. At that orientation BERGQUIST demanded, without any prior notification to GELINAS, that GELINAS execute the NON-COMPETE AGREEMENT. Prior thereto BERGQUIST had not informed GELINAS that his employment with BERGQUIST was conditioned on his execution of the NON-COMPETE AGREEMENT. BERGQUIST did not provide GELINAS with anything in exchange for his execution of the NON-COMPETE AGREEMENT. Under duress and fearing that his employment would be terminated if he refused BERGQUIST'S demand, GELINAS executed the NON-COMPETE AGREEMENT. (A true and correct copy of the NON-COMPETE AGREEMENT is attached hereto as Exhibit B, and incorporated herein by this reference.)

1 10. Under the NON-COMPETE AGREEMENT GELINAS is prohibited, for a period of
2 twelve (12) months after termination of his employment, from competing with BERGQUIST in any
3 manner or soliciting BERGQUIST'S employees. The NON-COMPETE AGREEMENT states in
4 pertinent part as follows:

5 "3. Non-competition. During employment and for twelve (12) months
6 after terminating employment with the Company regardless of the reason, the
7 Employee shall not, directly or indirectly, on behalf of Employee or any other
8 person or entity, provide services for products that compete with any product or
9 service provided by the Company or which was in development during the
10 Employee's employment"..."

11 And

12 "5. Non-solicitation of customers. The Employee agrees not to compete
13 with the Company by doing business with or seeking orders from any customer of
14 the Company for 12 months after termination of the employment relationship.
15 The Employee agrees that soliciting customers will cause the Company
16 irreparable harm."

17 11. The NON-COMPETE AGREEMENT further provides that it is to be interpreted and
18 enforced in accordance with the laws of the State of Minnesota. The NON-COMPETE
19 AGREEMENT does not include an arbitration provision.

20 12. GELINAS performed all of the duties required to be performed by him pursuant to the
21 terms of the EMPLOYMENT AGREEMENT. GELINAS performed all such duties either at his
22 Santa Clara office or in BERGQUIST'S Northern California, Oregon, Washington and Canada sales
23 territory.

24 13. As of October 23, 2007, GELINAS was entitled to a bonus pursuant to
25 BERGQUIST'S "RSM NA Sales Incentive Compensation" plan.

26 14. On or about October 23, 2007, BERGQUIST terminated GELINAS' employment
27 without cause. On that same day BERGQUIST provided him with a copy of a Separation Agreement
28 and General Release (hereinafter "SEPARATION AGREEMENT") and demanded that he execute it

1 within forty-five (45) days. (A true and correct copy of the SEPARATION AGREEMENT is
 2 attached hereto, designated Exhibit "C" and incorporated herein by this reference.) The
 3 SEPARATION AGREEMENT does not contain a choice of law provision. The SEPARATION
 4 AGREEMENT includes in paragraph 6 an arbitration provision that obligates BERGQUIST and
 5 GELINAS to resolve any dispute through binding arbitration in Minneapolis, Minnesota, and, among
 6 other things, obligates each to pay for one half of the arbitrator's fees. The only consideration set
 7 forth in the Separation Agreement was payment of the RSM NA Sales Incentive which was already
 8 owed. Fearful that if he did not execute the agreement BERGQUIST would refuse to pay him the
 9 outstanding bonus payment that he was owed by BERGQUIST, GELINAS executed the
 10 SEPARATION AGREEMENT.

11 15. On or about December 5, 2007, GELINAS accepted a Director of Sales – Western
 12 Region position with Laird Technologies, Inc. (hereinafter "LAIRD"). LAIRD is a Delaware
 13 corporation with its principal place of business in Chesterfield, Missouri. This position obligates
 14 GELINAS to manage and coordinate the sales activities of LAIRD in its western sales territory.
 15 LAIRD'S western territory is comprised of the United States (west of the Mississippi River only) and
 16 Mexico. Since joining LAIRD in December of 2007, GELINAS has spent approximately ninety
 17 percent (90%) of his time devoted to the sales activities of LAIRD in areas that are located outside of
 18 BERGQUIST'S Northern California, Oregon, Washington and Canada sales territory and only fifteen
 19 to twenty percent (15-20%) of LAIRD'S business is comparable to BERGQUIST'S.

20 16. On or about February 5, 2008, BERGQUIST sent GELINAS a letter informing him of
 21 its intent to enforce the terms of the NON-COMPETE AGREEMENT in an arbitration proceeding in
 22 Minneapolis, Minnesota, and asserting that his actions on behalf of Laird were prohibited by the
 23 terms of the NON-COMPETE AGREEMENT.

24 **FIRST CAUSE OF ACTION**

25 **(Declaratory Relief Regarding the NON-COMPETE AGREEMENT**

26 **Against All Defendants)**

27 17. GELINAS incorporates herein by reference each and every allegation contained in
 28 paragraphs 1 – 16 above.

1 18. An actual controversy has arisen and now exists between GELINAS and
2 Defendants concerning their respective rights and obligations under the NON-COMPETE
3 AGREEMENT.

4 19. GELINAS contends that the NON-COMPETE AGREEMENT is void and
5 unenforceable because it restricts GELINAS' right to work for a competing business, and in doing so
6 violates California Business & Professions Code § 16600, et seq. This statute provides that covenants
7 not to compete which restrict the rights of employees to work wherever they choose are
8 unenforceable. Under this statute and California law, covenants which contain improper restrictions
9 relating to an employee's right to work violate the public policy of the State of California and are
10 unenforceable.

11 20. GELINAS further contends that because he did not receive anything from
12 BERGQUIST in exchange for his execution of the NON-COMPETE AGREEMENT, it is not
13 supported by adequate consideration and is therefore unenforceable.

14 21. GELINAS further contends that the choice of law provision in paragraph 14 of the
15 NON-COMPETE AGREEMENT which provides that its terms should be interpreted in accordance
16 with the laws of Minnesota is unenforceable. The NON-COMPETE AGREEMENT contains an
17 illegal covenant not to compete and thereby violates the public policy of the State of California. The
18 choice of law provision therein is also unenforceable and California law must be applied in any
19 dispute arising out of the NON-COMPETE AGREEMENT.

20 **SECOND CAUSE OF ACTION**

21 **(Declaratory Relief Regarding the SEPARATION AGREEMENT**

22 **Against All Defendants)**

23 22. GELINAS incorporates herein by reference each and every allegation contained in
24 paragraphs 1 - 21 above.

25 23. An actual controversy has arisen and now exists between GELINAS and
26 Defendants concerning their respective rights and obligations under the SEPARATION
27 AGREEMENT.
28

1 24. GELINAS contends that because he did not receive anything from BERGQUIST in
2 exchange for his execution of the SEPARATION AGREEMENT, it is not supported by adequate
3 consideration and is therefore unenforceable.

4 25. GELINAS further contends that California law should be applied in any dispute
5 arising out of the SEPARATION AGREEMENT. California has a public policy of regulating the
6 relationships between employers and California based employees. Because the SEPARATION
7 AGREEMENT relates to the employer-employee relationship between BERGQUIST and
8 GELINAS, and because the SEPARATION AGREEMENT does not contain a choice of law
9 provision, California law should be applied.

10 26. GELINAS further contends that adjudication of the enforceability of the NON-
11 COMPETE AGREEMENT or issuance of any judgment relating to the NON-COMPETE
12 AGREEMENT may not be determined in arbitration. The NON-COMPETE AGREEMENT does
13 not include an arbitration provision. The SEPARATION AGREEMENT does not integrate the
14 NON-COMPETE AGREEMENT, and therefore the arbitration provision of the SEPARATION
15 AGREEMENT is not binding on any dispute arising out of the NON-COMPETE AGREEMENT.

16 27. GELINAS further contends that even if the arbitration provision in paragraph 6 of the
17 SEPARATION AGREEMENT, which provides that any dispute arising out of the SEPARATION
18 AGREEMENT is subject to binding arbitration, applied to the NON-COMPETE AGREEMENT, it is
19 also unenforceable. Under California law, arbitration provisions that are procedurally or
20 substantively unconscionable are unenforceable. The arbitration provision in the SEPARATION
21 AGREEMENT is both procedurally and substantively unconscionable, because, among other reasons,
22 it obligates GELINAS to pay for one half of the arbitrator's fees and for the arbitration to be held in
23 Minneapolis, Minnesota. As such it is unenforceable.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, Michel Gelinas, prays this Court for declaratory judgment against
26 Defendant, the Bergquist Company, and all identified DOE Defendants as follows:

27 1. For a judicial declaration regarding the rights and other legal relationships between the
28 Plaintiff and Defendants as to the NON-COMPETE AGREEMENT;

1 2. For a judicial declaration that the NON-COMPETE AGREEMENT is unenforceable
2 by Defendants due to lack of adequate consideration;

3 3. For a judicial declaration that the NON-COMPETE AGREEMENT is void under Cal.
4 Bus. & Prof. Code § 16600, et seq. and Defendants are, therefore, barred from enforcing it against
5 Plaintiff;

6 4. For a judicial declaration that the NON-COMPETE AGREEMENT is unenforceable
7 by Defendants due to lack of consideration;

8 5. For a judicial declaration that the choice of law provision in the NON-COMPETE
9 AGREEMENT is void and that California law should govern any dispute arising out of the NON-
10 COMPETE AGREEMENT;

11 6. For an Order prohibiting Defendants from enforcing the NON-COMPETE
12 AGREEMENT;

13 7. For a judicial declaration regarding the rights and other legal relationships between the
14 Plaintiff and Defendants as to the SEPARATION AGREEMENT;

15 8. For a judicial declaration that the SEPARATION AGREEMENT is unenforceable by
16 Defendants due to lack of adequate consideration;

17 9. For a judicial declaration that the arbitration provision in the SEPARATION
18 AGREEMENT is void because it violates California law and is unenforceable;

19 10. For a judicial declaration that California law should be applied in any dispute arising
20 out of the SEPARATION AGREEMENT;

21 11. For a judicial declaration that if an arbitration is conducted pursuant to the terms of the
22 SEPARATION AGREEMENT, such arbitration may not involve consideration of the enforceability
23 of the NON-COMPETE AGREEMENT or issuance of any judgment or ruling regarding the NON-
24 COMPETE AGREEMENT;

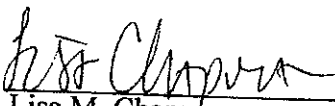
25 12. For an Order prohibiting Defendants from enforcing the SEPARATION
26 AGREEMENT;

27 13. For the costs of this action; and,
28

1 14. For such other and further relief as this Court seems just and equitable.
2

3 DATED: March 18, 2008

4 Respectfully submitted,
5 NIXON PEABODY LLP

6 By: 
7 Lisa M. Chapman
8 Attorneys for Plaintiff
9 MICHEL GELINAS
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FILED

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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

ADR

1 Richard W. Osen, Esq. (SBN 042566)
2 Julie A. Raney, Esq. (SBN 176060)
3 Ann Taylor Schwing, Esq. (SBN 91914)
4 MCDONOUGH HOLLAND & ALLEN PC
5 555 Capitol Mall 9th Floor
6 Sacramento, CA 95814
7 Tel: (916) 444-3900
8 Fax: (916) 444-3249

Attorneys for Defendant

E-FILING

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHEL GELINAS

Plaintiff,

v.

THE BERGQUIST COMPANY,

Defendant.

CASE NO.:

008 02137

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(b)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant files this Notice of Removal pursuant to 28 U.S.C. §§ 1441(a) and 1446 and in support thereof gives notice of the following facts:

IDENTIFICATION AND CITIZENSHIP OF PARTIES

1. At the time this action was commenced, and as of the date of this Notice of Removal, Michel Gelinas ("Gelinas") was and is a citizen in the State of California, County of Santa Clara.
2. At the time this action was commenced, and as of the date of this Notice of Removal, The Bergquist Company ("Bergquist") was and is a corporation duly organized under the laws of the State of Minnesota, with its principal place of business in Chanhassen, Minnesota.
3. At the time this action was commenced, Gelinas averred DOES 1-20 by fictitious names as defendants. Gelinas does not assert that any DOES are California citizens. Moreover,

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Notice of Filing of Removal to Federal Court

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FILE BY FAX BY FAX

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1 pursuant to 28 U.S.C. § 1441(a), the citizenship of fictitious names, such as John Doe, will be
2 disregarded for purposes of diversity of citizenship in removal actions.

3 THE CIVIL ACTION

4 4. On or about March 27, 2008, Gelinas instituted a civil action against Bergquist in the
5 Superior Court of the State of California Santa Clara County, Case No. 108CV109164. Bergquist
6 first learned of the Complaint by fax service of a Summons and Complaint upon Bergquist on
7 April 3, 2008. A copy of the Summons and Complaint in that matter are attached as Exhibit A.

8
9 5. The Summons and Complaint, accompanied by the state court's Civil Lawsuit Notice
10 and Alternative Dispute Resolution Information Sheet which are attached as Exhibit B, are the only
11 process and pleadings that have been served upon Bergquist by Gelinas.

12 JURISDICTION AND REMOVAL

13 6. Based upon the facts alleged in paragraphs 1 through 3 of this Notice of Removal,
14 there is complete diversity of citizenship between Gelinas and Bergquist.

15 7. The amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and
16 costs. After Gelinas terminated his employment with Bergquist, and in direct violation of his
17 noncompete agreement, he has commenced and persisted to engage in activities violative of his
18 agreement. Bergquist has already suffered resulting damages in excess of \$75,000.00, exclusive of
19 interests and costs and will continue to suffer more losses if Gelinas does not desist his dealings.
20 *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). Accordingly,
21 removal of this action is proper pursuant to 28 U.S.C. § 1441, because this is a civil action brought
22 in state court over which this Federal District Court would have original jurisdiction pursuant to 28
23 U.S.C. § 1332(a).

24 8. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty
25 days of the first receipt by Bergquist of the Summons and Complaint in the California state court
26 proceeding.

27 9. Bergquist will promptly give written notice of the filing of this Notice of Removal to
28 Gelinas, through his counsel, and will file a copy of this Notice of Removal with the clerk of the

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1 Superior Court of the State of California for the County of Santa Clara.

2 10. Based on the foregoing, Bergquist hereby removes the above-entitled action from the
3 Superior Court of the State of California for the County of Santa Clara to the United States District
4 Court for the Northern District of California, San Jose Division.

5 DATED: April 24, 2008

6 By: 

7 Richard W. Osen
Julie A. Raney

8 Bruce J. Douglas, Esq.
9 Willow J. Najjar, Esq.
LARKIN HOFFMAN DALY & LINDGREN, LTD.
10 7900 Xerxes Avenue South, # 1500
Minneapolis, MC 55431-1194
11 t: (952) 835.3800
f: (952) 896.3333
12 (to be admitted pro hac vice)

Richard W. Osen, Esq. (SBN 042566)
Julie A. Raney, Esq. (SBN 176060)
McDONOUGH HOLLAND & ALLEN PC
555 Capitol Mall, 9th Floor
Sacramento, CA 95814
t: (916) 444.3900
f: (916) 444.3249

13 ATTORNEYS FOR
14 THE BERGQUIST COMPANY

15 **BY FAX**
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EXHIBIT A

1 Lisa M. Chapman (SBN #118113)
2 NIXON PEABODY LLP
3 200 Page Mill Road, Second Floor
4 Palo Alto, CA 94306-2022
5 Telephone: (650) 320-7700
6 Fax: (650) 320-7701

7 Attorney for Plaintiff
8 MICHEL GELINAS

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NOTICE OF THE JUDICIAL
CLERK OF THE COURT
RECEIVED

9 SUPERIOR COURT OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SANTA CLARA

11 MICHEL GELINAS, an individual,

12 Plaintiff,

13 vs.

14 THE BERGQUIST COMPANY, a Minnesota
15 corporation, and DOES 1 - 20, inclusive,

16 Defendants.

Case No.: 108CV109164

COMPLAINT FOR DECLARATORY
RELIEF

BY FAX

17
18 Plaintiff, Michel Gelnas (hereinafter "GELINAS" or "Plaintiff"), for his complaint against
19 Defendant the Bergquist Company (hereinafter, "BERGQUIST" or Defendant), alleges and states as
20 follows:

21 NATURE OF ACTION

22 1. This is an action by GELINAS, a former employee of BERGQUIST, whereby
23 GELINAS seeks a determination and declaration of his rights, duties and obligations, if any, in
24 connection with the Non-compete, Non-Solicitation and Confidentiality Agreement (hereinafter the
25 "NON-COMPETE AGREEMENT") signed by GELINAS on or about April 27, 2004 and the
26 Separation Agreement and General Release (hereinafter the "SEPARATION AGREEMENT")
27 entered into between GELINAS and BERGQUIST on or about October 23, 2007.
28

COMPLAINT FOR DECLARATORY RELIEF

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PARTIES, JURISDICTION AND VENUE

2. GELINAS is an individual residing in the State of California, County of Santa Clara.

3. Plaintiff is informed and believes and thereon alleges that BERGQUIST is a Minnesota corporation with its principal place of business in Chanhassen, Minnesota. BERGQUIST is a developer, manufacturer and distributor of thermal products, membrane switches, electronic components and touch screens.

4. Plaintiff does not know the true names and capacities whether individual, corporate, partnership or otherwise, of DOES 1 - 20, inclusive, and therefore sues these Defendants by fictitious names. Plaintiff is informed and believes, and thereon alleges that such Defendants are, in some manner, persons or entities related to BERGQUIST and are responsible for the matters alleged herein and/or are interested in the matters which are the subject of this complaint, and therefore should be made parties to this action. When the true names and capacities of DOES 1 - 20 are ascertained, this complaint will be amended accordingly.

5. Plaintiff is informed and believes, and on that basis alleges, that all relevant times each of the Defendants (including the fictitiously named DOE Defendants), were the alter ego, agent, servant, employee or principal of each of the other Defendants, and in doing the acts alleged were acting within the course and scope of their agency or employment with the knowledge and consent of each Defendant.

6. Jurisdiction is proper in California because Defendant sold goods that were purchased by consumers in California and employed sales personnel that resided in California and performed employment related duties in California and Defendant's relationship to the state is such that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.

7. Venue is proper in Santa Clara County Superior Court because (a) GELINAS resides in Santa Clara County, and (b) the employment related services provided by GELINAS pursuant to the terms of the employment agreement entered into between the parties were predominately provided by GELINAS in Santa Clara County.

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THE AGREEMENTS

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9. On or about April 27, 2004, GELINAS commenced his employment with BERGQUIST by attending a mandatory new employee orientation at BERGQUIST'S corporate office in Minneapolis, Minnesota. At that orientation BERGQUIST demanded, without any prior notification to GELINAS, that GELINAS execute the NON-COMPETE AGREEMENT. Prior thereto BERGQUIST had not informed GELINAS that his employment with BERGQUIST was conditioned on his execution of the NON-COMPETE AGREEMENT. BERGQUIST did not provide GELINAS with anything in exchange for his execution of the NON-COMPETE AGREEMENT. Under duress and fearing that his employment would be terminated if he refused BERGQUIST'S demand, GELINAS executed the NON-COMPETE AGREEMENT. (A true and correct copy of the NON-COMPETE AGREEMENT is attached hereto as Exhibit B, and incorporated herein by this reference.)

1 10. Under the NON-COMPETE AGREEMENT GELINAS is prohibited, for a period of
2 twelve (12) months after termination of his employment, from competing with BERGQUIST in any
3 manner or soliciting BERGQUIST'S employees. The NON-COMPETE AGREEMENT states in
4 pertinent part as follows:

5 "3. Non-competition. During employment and for twelve (12) months
6 after terminating employment with the Company regardless of the reason, the
7 Employee shall not, directly or indirectly, on behalf of Employee or any other
8 person or entity, provide services for products that compete with any product or
9 service provided by the Company or which was in development during the
10 Employee's employment"..."

11 And

12 "5. Non-solicitation of customers. The Employee agrees not to compete
13 with the Company by doing business with or seeking orders from any customer of
14 the Company for 12 months after termination of the employment relationship.
15 The Employee agrees that soliciting customers will cause the Company
16 irreparable harm."

17 11. The NON-COMPETE AGREEMENT further provides that it is to be interpreted and
18 enforced in accordance with the laws of the State of Minnesota. The NON-COMPETE
19 AGREEMENT does not include an arbitration provision.

20 12. GELINAS performed all of the duties required to be performed by him pursuant to the
21 terms of the EMPLOYMENT AGREEMENT. GELINAS performed all such duties either at his
22 Santa Clara office or in BERGQUIST'S Northern California, Oregon, Washington and Canada sales
23 territory.

24 13. As of October 23, 2007, GELINAS was entitled to a bonus pursuant to
25 BERGQUIST'S "RSM NA Sales Incentive Compensation" plan.

26 14. On or about October 23, 2007, BERGQUIST terminated GELINAS' employment
27 without cause. On that same day BERGQUIST provided him with a copy of a Separation Agreement
28 and General Release (hereinafter "SEPARATION AGREEMENT") and demanded that he execute it

1 within forty-five (45) days. (A true and correct copy of the SEPARATION AGREEMENT is
2 attached hereto, designated Exhibit "C" and incorporated herein by this reference.) The
3 SEPARATION AGREEMENT does not contain a choice of law provision. The SEPARATION
4 AGREEMENT includes in paragraph 6 an arbitration provision that obligates BERGQUIST and
5 GELINAS to resolve any dispute through binding arbitration in Minneapolis, Minnesota, and, among
6 other things, obligates each to pay for one half of the arbitrator's fees. The only consideration set
7 forth in the Separation Agreement was payment of the RSM NA Sales Incentive which was already
8 owed. Fearful that if he did not execute the agreement BERGQUIST would refuse to pay him the
9 outstanding bonus payment that he was owed by BERGQUIST, GELINAS executed the
10 SEPARATION AGREEMENT.

11 15. On or about December 5, 2007, GELINAS accepted a Director of Sales - Western
12 Region position with Laird Technologies, Inc. (hereinafter "LAIRD"). LAIRD is a Delaware
13 corporation with its principal place of business in Chesterfield, Missouri. This position obligates
14 GELINAS to manage and coordinate the sales activities of LAIRD in its western sales territory.
15 LAIRD'S western territory is comprised of the United States (west of the Mississippi River only) and
16 Mexico. Since joining LAIRD in December of 2007, GELINAS has spent approximately ninety
17 percent (90%) of his time devoted to the sales activities of LAIRD in areas that are located outside of
18 BERGQUIST'S Northern California, Oregon, Washington and Canada sales territory and only fifteen
19 to twenty percent (15-20%) of LAIRD'S business is comparable to BERGQUIST'S.

20 16. On or about February 5, 2008, BERGQUIST sent GELINAS a letter informing him of
21 its intent to enforce the terms of the NON-COMPETE AGREEMENT in an arbitration proceeding in
22 Minneapolis, Minnesota, and asserting that his actions on behalf of Laird were prohibited by the
23 terms of the NON-COMPETE AGREEMENT.

24 **FIRST CAUSE OF ACTION**

25 (Declaratory Relief Regarding the NON-COMPETE AGREEMENT

26 Against All Defendants)

27 17. GELINAS incorporates herein by reference each and every allegation contained in
28 paragraphs 1 - 16 above.

1 18. An actual controversy has arisen and now exists between GELINAS and
2 Defendants concerning their respective rights and obligations under the NON-COMPETE
3 AGREEMENT.

4 19. GELINAS contends that the NON-COMPETE AGREEMENT is void and
5 unenforceable because it restricts GELINAS' right to work for a competing business, and in doing so
6 violates California Business & Professions Code § 16600, et seq. This statute provides that covenants
7 not to compete which restrict the rights of employees to work wherever they choose are
8 unenforceable. Under this statute and California law, covenants which contain improper restrictions
9 relating to an employee's right to work violate the public policy of the State of California and are
10 unenforceable.

11 20. GELINAS further contends that because he did not receive anything from
12 BERGQUIST in exchange for his execution of the NON-COMPETE AGREEMENT, it is not
13 supported by adequate consideration and is therefore unenforceable.

14 21. GELINAS further contends that the choice of law provision in paragraph 14 of the
15 NON-COMPETE AGREEMENT which provides that its terms should be interpreted in accordance
16 with the laws of Minnesota is unenforceable. The NON-COMPETE AGREEMENT contains an
17 illegal covenant not to compete and thereby violates the public policy of the State of California. The
18 choice of law provision therein is also unenforceable and California law must be applied in any
19 dispute arising out of the NON-COMPETE AGREEMENT.

20 SECOND CAUSE OF ACTION

21 (Declaratory Relief Regarding the SEPARATION AGREEMENT

22 Against All Defendants)

23 22. GELINAS incorporates herein by reference each and every allegation contained in
24 paragraphs 1 - 21 above.

25 23. An actual controversy has arisen and now exists between GELINAS and
26 Defendants concerning their respective rights and obligations under the SEPARATION
27 AGREEMENT.

1 24. GELINAS contends that because he did not receive anything from BERGQUIST in
2 exchange for his execution of the SEPARATION AGREEMENT, it is not supported by adequate
3 consideration and is therefore unenforceable.

4 25. GELINAS further contends that California law should be applied in any dispute
5 arising out of the SEPARATION AGREEMENT. California has a public policy of regulating the
6 relationships between employers and California based employees. Because the SEPARATION
7 AGREEMENT relates to the employer-employee relationship between BERGQUIST and
8 GELINAS, and because the SEPARATION AGREEMENT does not contain a choice of law
9 provision, California law should be applied.

10 26. GELINAS further contends that adjudication of the enforceability of the NON-
11 COMPETE AGREEMENT or issuance of any judgment relating to the NON-COMPETE
12 AGREEMENT may not be determined in arbitration. The NON-COMPETE AGREEMENT does
13 not include an arbitration provision. The SEPARATION AGREEMENT does not integrate the
14 NON-COMPETE AGREEMENT, and therefore the arbitration provision of the SEPARATION
15 AGREEMENT is not binding on any dispute arising out of the NON-COMPETE AGREEMENT.

16 27. GELINAS further contends that even if the arbitration provision in paragraph 6 of the
17 SEPARATION AGREEMENT, which provides that any dispute arising out of the SEPARATION
18 AGREEMENT is subject to binding arbitration, applied to the NON-COMPETE AGREEMENT, it is
19 also unenforceable. Under California law, arbitration provisions that are procedurally or
20 substantively unconscionable are unenforceable. The arbitration provision in the SEPARATION
21 AGREEMENT is both procedurally and substantively unconscionable, because, among other reasons,
22 it obligates GELINAS to pay for one half of the arbitrator's fees and for the arbitration to be held in
23 Minneapolis, Minnesota. As such it is unenforceable.

24 PRAYER FOR RELIEF

25 WHEREFORE, Plaintiff, Michel Gelin, prays this Court for declaratory judgment against
26 Defendant, the Bergquist Company, and all identified DOE Defendants as follows:

27 1. For a judicial declaration regarding the rights and other legal relationships between the
28 Plaintiff and Defendants as to the NON-COMPETE AGREEMENT;

1 2. For a judicial declaration that the NON-COMPETE AGREEMENT is unenforceable
2 by Defendants due to lack of adequate consideration;

3 3. For a judicial declaration that the NON-COMPETE AGREEMENT is void under Cal.
4 Bus. & Prof. Code § 16600, et seq. and Defendants are, therefore, barred from enforcing it against
5 Plaintiff;

6 4. For a judicial declaration that the NON-COMPETE AGREEMENT is unenforceable
7 by Defendants due to lack of consideration;

8 5. For a judicial declaration that the choice of law provision in the NON-COMPETE
9 AGREEMENT is void and that California law should govern any dispute arising out of the NON-
10 COMPETE AGREEMENT;

11 6. For an Order prohibiting Defendants from enforcing the NON-COMPETE
12 AGREEMENT;

13 7. For a judicial declaration regarding the rights and other legal relationships between the
14 Plaintiff and Defendants as to the SEPARATION AGREEMENT;

15 8. For a judicial declaration that the SEPARATION AGREEMENT is unenforceable by
16 Defendants due to lack of adequate consideration;

17 9. For a judicial declaration that the arbitration provision in the SEPARATION
18 AGREEMENT is void because it violates California law and is unenforceable;

19 10. For a judicial declaration that California law should be applied in any dispute arising
20 out of the SEPARATION AGREEMENT;

21 11. For a judicial declaration that if an arbitration is conducted pursuant to the terms of the
22 SEPARATION AGREEMENT, such arbitration may not involve consideration of the enforceability
23 of the NON-COMPETE AGREEMENT or issuance of any judgment or ruling regarding the NON-
24 COMPETE AGREEMENT;

25 12. For an Order prohibiting Defendants from enforcing the SEPARATION
26 AGREEMENT;

27 13. For the costs of this action; and,
28

1 14. For such other and further relief as this Court seems just and equitable.
2

3 DATED: March 18, 2008

4 Respectfully submitted,
5 NIXON PEABODY LLP


6 By: 
7 Lisa M. Chapman
8 Attorneys for Plaintiff
9 MICHEL GELINAS
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EXHIBIT B

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
181 N. First St., San Jose, CA 95113

CASE NUMBER:

108CV109164 ATTACHMENT CV-5012

READ THIS ENTIRE FORM

PLAINTIFFS (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the Complaint, Summons, an Alternative Dispute Resolution (ADR) Information Sheet, and a copy of this Civil Lawsuit Notice, and you must file written proof of such service.

DEFENDANTS (The person(s) being sued): You must do each of the following to protect your rights:

1. You must file a written response to the Complaint, in the Clerk's Office of the Court, within 30 days of the date the Summons and Complaint were served on you.
2. You must send a copy of your written response to the plaintiff, and
3. You must attend the first Case Management Conference.

Warning: If you do not do these three things, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 N. First Avenue, San Jose (408-882-2900 x-2928), or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/tides
- Local Rules and Forms: <http://www.sccourtsuperiorcourt.org/civilrule110s.htm>
- Rose Printing: 400-203-8177 or jackv@rose-printing.com (there is a charge for forms)

For other local legal information, visit the Court's Self-Service website www.sccselfservice.org and select "Civil."

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a Case Management Statement (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone—see Local Civil Rule 8.

Your Case Management Judge is: Kevin J. Murphy Department: 22

The 1st CMC is scheduled for: (Completed by Clerk of Court)
04/06/10 2008 Time: 3:00 PM In Department: 22

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)
Date: _____ Time: _____ In Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed ADR Selection Form (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccourtsuperiorcourt.org/civilrule110s.htm or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET / CIVIL DIVISION**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

- < Mediation is an informal, confidential process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator then helps the parties to explore options and arrive at a mutually acceptable resolution of the dispute. The mediator does not decide the dispute. The parties do.
- < Mediation may be appropriate when:
 - < The parties want a non-adversary procedure
 - < The parties have a continuing business or personal relationship
 - < Communication problems are interfering with a resolution
 - < There is an emotional element involved
 - < The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET / CIVIL DIVISION

Arbitration is a normally informal process in which the neutral (the arbitrator) decides the dispute after hearing the evidence and arguments of the parties. The parties can agree to binding or non-binding arbitration. Binding arbitration is designed to give the parties a resolution of their dispute when they cannot agree by themselves or with a mediator. If the arbitration is non-binding, any party can reject the arbitrator's decision and request a trial.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
- < Only monetary damages are sought
- < Witness testimony, under oath, is desired
- < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Neutral evaluation is an informal process in which a neutral party (the evaluator) reviews the case with counsel and gives a non-binding assessment of the strengths and weaknesses on each side and the likely outcome. The neutral can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in no injunction, consent decree, or other form of equitable relief

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; corporations; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; products liability; property damage; real estate; securities; and sports, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, for information about ADR procedures, or for other questions about ADR?

Contact
Santa Clara County Superior Court
ADR Administrator
408-882-2530

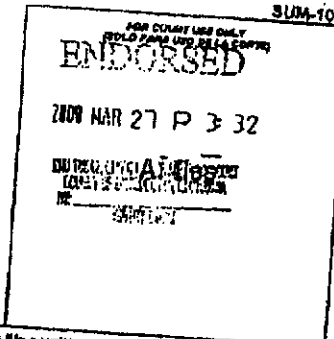
Santa Clara County DRPA Coordinator
408-792-2704

ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET/ CIVIL DIVISION

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
THE BERQUIST COMPANY, a Minnesota corporation,

and DOES 1-20, inclusive
YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
MICHEL GELINAS, an individual,



You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at the court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp). If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tienes 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito a esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que la corte lo oiga. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida el formulario de exención de pago de costas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otras regulaciones legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de revisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, o en el Centro de Ayuda de las Cortes de California.

The name and address of the court is:
(El nombre y dirección de la corte es):
SUPERIOR COURT OF CALIFORNIA
191 North First Street

San Jose, California 95106-2022

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Lisa M. Chapman (SBN 118111)
NIXON PEARODY LLP
200 Page Mill Road, Second Floor
Palo Alto, CA 94306-2022
Tel: (650) 320-7700 Fax: (650) 320-7701

DATE: MAR 24 2008

(Fechas)
(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de este citación use el formulario Proof of Service of Summons, (POS-010).)

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the following name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other (specify):
4. ☐ by personal delivery on (date):
☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (authorized person)

Form Summons for Money Use
Judicial Council of California
pub-100 (Rev. January 1, 2006)

SUMMONS

Legal
Services
CA Plus

Page 1 of 1
Code of Civil Procedure §§ 412.20, 412.21

JS-44 - CANDO (Rev. 11/04)

CIVIL COVER SHEET

The JS-44 Civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I. (a) PLAINTIFFS
Michel Gelines

DEFENDANTS
The Bergquist Company

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF: Santa Clara
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT: N/A
NOTE: IN U.S. PLAINTIFF CASES, INDICATE THE COUNTY OF RESIDENCE OF THE PLAINTIFF. IN ALL OTHER CASES, INDICATE THE LOCATION OF THE PLACE OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Lisa M. Chapman
Nixon Peabody LLP
200 Page Mill Road, Second Floor,
Palo Alto, California 94306-2002
(650) 320-7701

ATTORNEYS (IF KNOWN)
Richard W. Osen and Julie A. Raney, Esq.
McDonough, Holland & Allen, PC
555 Capitol Mall 9th Floor
Sacramento, California 95814 (916) 444-3800

II. BASIS OF JURISDICTION

- (PLACE AN "X" IN ONE BOX ONLY)
- ☐ 1. U.S. Government Plaintiff
☐ 2. U.S. Government Defendant
☐ 3. Federal Question (U.S. Government Not a Party)
☒ 4. Diversity (Indicate Citizenship of Parties in Item III)

CITIZENSHIP OF PRINCIPAL PARTIES

- (For Diversity Cases Only)
- Children of This State ☒ PTF ☐ DEF
Citizen of Another State ☐ 2 ☐ 2
Children or Subject of a Foreign Country ☐ 3 ☐ 3
- INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
Foreign Nation
- PTF DEF
☐ 4 ☐ 4
☐ 5 ☒ 5
☐ 6 ☐ 6

IV. ORIGIN

- (PLACE AN "X" IN ONE BOX ONLY)
- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Remanded or Reopened

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT

- ☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Employment & Enforcement of Judgment
☐ 151 Medicare
☐ 152 Recovery of Defaulted Student Loans (Educational Veterans)
☐ 153 Recovery of Overpayment of Veterans' Benefits
☐ 154 Stockholders' Suits
☐ 155 Other Contract
☐ 156 Contract Product Liability
☐ 156 Franchise

REAL PROPERTY

- ☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 250 All Other Real Property

TORTS

- ☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

CIVIL RIGHTS

- ☐ 401 Voting
☐ 402 Employment
☐ 403 Housing
☐ 404 Workers
☐ 405 Other Civil Rights
☐ 406 Arrest or Detention - Empl
☐ 408 Arrest or Detention - Other

PRISONER PETITIONS

- ☐ 510 Motion to Vacate Sentence Habeas Corpus
☐ 520 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE/PENALTY

- ☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 NK & Truck
☐ 650 Airline Regs
☐ 655 Occupational Safety/Health
☐ 660 Other

LABOR

- ☐ 710 Fair Labor Standards Act
☐ 720 Labor/Right to Work
☐ 730 Labor/Unfair Labor Practices & Discrimination Act
☐ 740 Railway Labor Act
☐ 750 Other Labor Legislation
☐ 751 Empl. Ret. Inv. Security Act

BANKRUPTCY

- ☐ 432 Appeal 28 USC 158
☐ 433 Withdrawal 28 USC 157

PROPERTY RIGHTS

- ☐ 830 Copyrights
☐ 835 Patent
☐ 840 Trademark

SOCIAL SECURITY

- ☐ 851 HIA (13000)
☐ 852 Black Lung (922)
☐ 853 DISCOW/WHV (401(a))
☐ 854 SSI/TIDE XVI
☐ 855 RSI (406(a))

FEDERAL TAX SUITS

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS-Third Party 26 USC 7609

OTHER STATUTES

- ☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 420 Banks and Banking
☐ 430 Commercial/ICC Rate/Reg.
☐ 440 Copyrights
☐ 450 Racketeer Influenced and Corrupt Organizations
☐ 460 Consumer Credit
☐ 470 Cable/Satellite TV
☐ 480 Selective Service
☐ 490 Securities/Commodities Exchange
☐ 500 Customer Challenge 12 USC 3410
☐ 503 Economic Stabilization Act
☐ 504 Agricultural Acts
☐ 505 Environmental Matters
☐ 506 Energy Allocation Act
☐ 507 Freedom of Information Act
☐ 508 Appeal of Fee Determination Under Equal Access to Justice
☐ 509 Constitutionality of State Statutes
☐ 510 Other Statutory Actions

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)
28 U.S.C. 1332(a), 1441(a), 1446. Removal of declaratory relief action over \$75,000 in controversy

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$0.00
VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

DATE
April, 24 2008

SIGNATURE OF ATTORNEY OF RECORD
Richard W. Osen

☒ SAN JOSE

1091486v 36989/0001

BY FAX